

SECOND DIVISION

[G.R. NO. 154502, April 27, 2007]

**EMMIE RESAYO Y CRUZ, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

CARPIO, J.:

The Case

This is a petition for review of the Decision^[1] dated 25 July 2002 of the Court of Appeals in CA-G.R. CR No. 18313. The Court of Appeals upheld the decision^[2] of the Regional Trial Court of Pasig City, Branch 70 (trial court) in Criminal Case Nos. 76322-23 finding petitioner Emmie Resayo y Cruz (Resayo) and Ricardo Reyes y Cruz @ Richie (Reyes) guilty beyond reasonable doubt of homicide and frustrated homicide.

The Facts

On 13 February 1989, Resayo and Reyes were charged in two separate Informations with the crimes of homicide and frustrated homicide. The Informations read:

Criminal Case No. 76322

That on or about the 5th day of February, 1989, in the Municipality of Tagig, [sic] Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with Larry C. Reyes who is still at large and mutually helping and aiding one another, armed with a bladed weapon, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and stab with the said bladed weapon one Roberto C. Aguinaldo on the vital parts of his body, thereby inflicting upon the latter mortal and fatal stab wounds which caused his death.

Contrary to law.^[3]

Criminal Case No. 76323

That on or about the 5th day of February, 1989, in the Municipality of Tagig, [sic] Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with Larry C. Reyes who is still at large and mutually helping and aiding with one another, armed with a bladed weapon, with intent to kill, did then and there, willfully, unlawfully and feloniously attack, assault and stab with the said bladed weapon one Alfredo A. Braga on the vital parts of his body, thereby inflicting upon the

latter stab wounds which ordinarily would have caused his death, thus performing all the acts of execution which would have produce[d] the crime of homicide but nevertheless did not produce it by reason of causes independent of the will of the accused, that is, due to the timely and able medical attendance rendered to the said Alfredo A. Braga which prevented to [sic] his death.

Contrary to law.^[4]

Upon arraignment, the two accused pleaded not guilty. Thereafter, trial ensued.

The trial court rendered a decision on 17 March 1995 finding the accused guilty as charged. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the Court finds both accused Emmie Resayo and Richie Reyes guilty beyond reasonable doubt of the crimes of homicide and frustrated homicide. However, Richie Reyes is entitled to the mitigating circumstance of voluntary surrender. Consequently, the Court sentences Emmie Resayo to suffer the indeterminate penalty of imprisonment ranging from eight (8) years and one day of prision mayor as minimum to fourteen (14) years, eight (8) months and one (1) day of Reclusion Temporal as maximum for homicide and the indeterminate penalty of two (2) years, four (4) months and one (1) day of prision mayor as maximum for frustrated homicide.

On the other hand, accused Richie Reyes is sentenced to suffer the indeterminate penalty of imprisonment ranging from six (6) years and one (1) day of prision mayor as minimum to twelve (12) years and one (1) day of reclusion temporal as maximum for homicide and the indeterminate penalty of imprisonment of six (6) months and one (1) day of prision correccional as minimum to six (6) years and one (1) day of prision mayor as maximum for the crime of frustrated homicide.

Further, the Court hereby orders said accused to jointly and severally pay the heirs of the deceased Robert[o] Aguinaldo the sum of P50,000.00 as and by way of civil indemnity for the death of the victim, P15,000.00 for funeral expenses and P10,000.00 as attorney's fees and to pay Alfredo Braga the amount of P5,000.00 for medical expenses and P10,000.00 as attorney's fees but without subsidiary imprisonment in case of insolvency.

SO ORDERED.^[5]

On appeal, the Court of Appeals affirmed the trial court's ruling. The dispositive portion of the Court of Appeals' decision dated 25 July 2002 reads:

WHEREFORE, premises considered, the present appeal is hereby DISMISSED and the decision appealed from in Criminal Case Nos. 76322-76323 is hereby AFFIRMED and UPHOLD.

With costs against the accused-appellants.

SO ORDERED.^[6]

Not satisfied with the Court of Appeals' decision, Resayo filed the instant petition for review. Reyes did not appeal from the decision of the Court of Appeals.

The Trial

When trial started, it was Judge Armie Elma who presided and heard the entire testimony of Dionisio Esteban (Esteban) and the partial testimony of Walter John Victoria (Victoria). Thereafter, Judge Harriet Demetriou (Judge Demetriou) presided over the case and penned the decision.

The prosecution presented nine witnesses, namely, Esteban, Alfredo Braga (Braga), Victoria, Dr. Desiderio Moraleda, Mrs. Lina Aguinaldo, Mrs. Editha Braga, Dr. Bonifacio Lacsina, Mrs. Rosario Villanueva, and Dr. Manuel Oliveros. The defense, on the other hand, presented seven witnesses, namely, Resayo, Reyes, Dr. Emmanuel Dela Fuente, Joselito Cipriano, Merlita Flores, Ernesto Hermillos, and Elena Reyes Tamayo.

Version of the Prosecution

The prosecution established that at about 1:30 p.m. of 5 February 1989, the group consisting of Braga, Esteban, Victoria, Roderick Bautista (Bautista), Edgardo Cruz, Alexander Garcia, Henry Victoria, Eduardo Relon, Antonio Esteban, and Roberto Aguinaldo (Aguinaldo) were in the house of their friend Emy Roldan (Roldan) located at Mastrilli Street, Bambang, Taguig, Metro Manila to celebrate simultaneously Roldan's birthday and the fiesta of Taguig. They had a few rounds of beer and exchanged jokes with Bogac Reyes (Bogac)^[7] as their subject. At about 4:00 to 4:30 p.m., Bogac's brothers, Larry, Cris, and Reyes, and their brother-in-law Rey arrived at the party to confront the group that was teasing Bogac. Roldan's mother, Aida Roldan, was able to patch up their differences and the celebration resumed until 7:00 to 7:30 p.m. While Braga's group was heading home, Esteban momentarily stopped to talk to his wife at the alley beside Roldan's house so the others went ahead. Aguinaldo and Braga were slightly in front of the others. Aguinaldo's hand was on Braga's shoulders. While talking to his wife, Esteban saw Larry heading toward Braga's group. Larry suddenly pulled a knife and stabbed Aguinaldo who was able to parry the blow, which instead hit Braga on the left side of the body just below the rib.

Thereafter, Victoria and Aguinaldo called their other friends who were still in the alley, and they immediately responded and pursued Larry who ran to Quezon Street. Esteban was able to catch up with Larry who tried to stab him but caused only a slight wound at his armpit. Victoria saw Aguinaldo run after Larry. Victoria, in turn, chased Aguinaldo to pacify him. However, upon reaching Quezon Street, Resayo suddenly appeared and stabbed Aguinaldo in the chest.

Then, an unfamiliar group of six or seven armed persons appeared at the corner of Mastrilli and Quezon Streets. An unidentified man tried to stab Victoria prompting him to retreat and run towards Roldan's house.

Meanwhile, Esteban, who was stabbed by Larry, saw Aguinaldo sprawled on the corner of Mastrilli and Quezon Streets. Since he was also in pain, Esteban asked Bautista to bring Aguinaldo to the hospital while a neighbor brought Esteban home. Along the way, Esteban saw Reyes stab Braga for the second time below the right

nipple. Braga was then already walking slowly and crouching while holding his left abdomen.

Dr. Desiderio Moraleda testified that Aguinaldo's stab wound located at his left mammary region, measuring 1.4 x 0.7 cm., 4 cm. from the anterior midline, 8 cm. deep, directed posteriorwards, slightly upwards and medialwards, passing thru the 5th left intercostal space, lacerating the pericardial sac and left and right ventricles of the heart was fatal. This wound eventually caused Aguinaldo's death.

Aguinaldo's mother, Lina, testified that in addition to her moral sufferings, she incurred funeral expenses of P15,000.

Braga's mother, Editha, testified that she spent P5,000 for the medical treatment of her son, and P600 per appearance of the private prosecutor.

Dr. Bonifacio Lacsina, a surgeon, and Dr. Manuel Oliveros, chief resident physician of the Rizal Medical Center, had similar findings that Braga's stab wound located at the left subcostal area with stomach perforation on greater curvature would have caused Braga's death were it not for the immediate medical attention.

Version of the Defense

The defense rests on alibis. Resayo, who was a tricycle driver, claims that he was pedaling his tricycle at the time of the incident. He testified that at around 7:00 p.m. of 5 February 1989, he brought a passenger to Barrio Sagad, Pasig. The passenger, a certain Patrolman David Rayos Del Sol (Pat. Rayos), made Resayo wait for two hours, before boarding the tricycle again, arriving at Taguig at around 9:00 p.m. The police invited Resayo for questioning in the morning of 7 February 1989 and executed a sworn statement dated 8 February 1989. Resayo alleged that he was accused of killing Aguinaldo based solely on the description of the suspect as having a red mark on the face caused by a fist blow. While Resayo had a red mark on his face, this was due to an operation on 3 October 1988, and not a fist blow. To support his claim, Resayo presented a medical certificate issued by the hospital. Resayo alleged that when he gave his statement, Pipiano Mamonong and Pat. Rayos were present, and the latter appeared surprised as he was on board Resayo's tricycle at the time in question.

Dr. Emmanuel Dela Fuente, a medical specialist at the Rizal Medical Center, corroborated Resayo's testimony that he had an operation on 3 October 1988, where an excision was done on a portion of Resayo's face, the mark below his eye having been caused by an infection as a result of the operation.

Joselito Cipriano, another tricycle driver plying the route of Barangay Tuktukan in Taguig, testified that he saw Resayo at Pateros driving his tricycle going to Taguig. At 9:45 p.m., he met and talked to Resayo whom he saw near Barangay Ususan and Barangay Tuktukan. He only learned about the stabbing incident when Resayo was jailed as a suspect. He visited Resayo in jail, who told him that he was innocent, and he believed Resayo since they were both pedaling their tricycles at the time of the incident.

Merlita Flores, sister of Reyes and cousin of Resayo, testified that Resayo's house is adjacent to hers. On the date in question, she had visitors since it was the fiesta of

Taguig. At around 7:00 p.m., she heard people shouting "*May gulo, may gulo.*" She climbed up to Quezon Street where she found that there was a fight between Braga's group and others against the visitors of her other brother Larry. She shielded her brother Larry who was being mauled by Braga's group. Then she shouted, "*Huwag! Ayan, may nasagasaan na,*" as she allegedly saw Aguinaldo being run over by a red car. However, when cross-examined, she admitted that Aguinaldo's death was due to a stab wound. Braga's group picked up Aguinaldo while she accompanied her brother Larry home so the blood on his forehead could be treated. She claimed she did not see Resayo at the scene of the incident. She only saw him park his tricycle at around 8:00 p.m. Neither did she see her brother Reyes, who she claimed was then inside the house of her cousin at No. 04 Quezon Street, Bambang, Taguig.

Ernesto Hermillos, a third cousin of both accused, testified that an unknown assailant, who was one of Lauro Reyes' visitors, stabbed Aguinaldo.

Reyes, Resayo's co-accused, denied the charges against him. He testified that he was at the Bambang Bridge, approximately 100 meters from the crime scene, during the stabbing incident. He stated that there was an on-going fight between Braga and Larry's groups, while he was about to go to work. Thus, his wife brought him to their aunt's house, which was only two meters from the Bambang Bridge, to avoid being involved in the fight. He claimed that he stayed there for about one hour, after which they proceeded to their place of work.

Elena Reyes Tamayo, another sister of Larry and Reyes, testified that a fight ensued between Braga's and her brother Larry's groups. She claimed that she saw a certain Totoy suddenly draw a bladed weapon and was about to stab her brother. Then, a certain Leo Bernales who was holding a knife prevented him and stabbed Totoy. She stated, on cross examination, that it was Leo Bernales who stabbed Totoy and not her brother Ricardo (or Reyes).

The Issues

Resayo faults the Court of Appeals for (1) finding the testimonies of the prosecution witnesses credible, though the judge who penned the decision did not hear their entire testimonies; (2) ruling that there was conspiracy; (3) not recognizing the alibis of the accused; and (4) disregarding Resayo's gesture of accepting the police's invitation as a sign of innocence.

The Ruling of the Court

The petition is partly meritorious.

On the credibility of the prosecution witnesses

Resayo argues that since Judge Demetriou did not hear the entire testimonies of Esteban and Victoria, the rule on non-interference with the determination of the credibility of witnesses does not apply. Indeed, one of the recognized exceptions to this rule is when the judge who penned the decision is not the judge who received the evidence and heard the witnesses.^[8] However, the efficacy of a decision is not necessarily impaired by the fact that the *ponente* only took over from a colleague who had earlier presided over the trial. It does not follow that a judge who was not